

# **FISCAL MEMORANDUM**

## **SB 1967 – HB 1835**

June 8, 2007

**SUMMARY OF AMENDMENT (010038):** Deletes the original bill in its entirety. Creates a Class D felony of possession of a firearm with the intent to go armed during the commission of or attempt to commit a “dangerous felony” punishable by a mandatory minimum three-year sentence served at 100% less allowable sentence reduction credits earned and retained. “Dangerous felony” defined as attempt to commit second degree murder, voluntary manslaughter, carjacking, especially aggravated kidnapping, aggravated kidnapping, especially aggravated burglary, aggravated burglary, especially aggravated stalking, aggravated stalking, initiating process to manufacture methamphetamine, a felony involving the sale, manufacture, distribution or possession with intent to sell, manufacture or distribute a controlled substance defined in Tenn. Code Ann. §39-12-101, and any attempt to commit a dangerous felony. If such defendant had a prior felony conviction at the time of the offense the minimum sentence would be five years.

Creates a Class C felony of employment of a firearm during the commission, attempt to commit, flight or escape from the commission, or flight or escape from the attempt to commit a dangerous felony. Such offense is punishable by a mandatory minimum six-year sentence served at 100%, less allowable sentence reduction credits earned and retained, unless the defendant had a prior felony conviction at the time of the offense, in which case the minimum sentence would be ten years. All sentences must be served consecutively to any sentence the person is serving at the time of the offense or is sentenced to serve for conviction of the underlying dangerous felony. Such offenses are ineligible for pretrial diversion, judicial diversion, probation, community correction, or participation in a drug court program prior to service of the entire mandatory sentence imposed less allowable sentence reduction credits earned and retained as provided in § 40-35-501(j). Sentence credits cannot reduce the minimum mandatory sentence more than 15 percent.

Increases penalty for second or subsequent convictions for the Class B felony offense of aggravated robbery occurring after January 1, 2008. Offender must serve 100 percent of sentence imposed by the court less earned sentence credits.

Prior conviction means that a person serves and is released or discharged from, or is serving, a separate period of incarceration or supervision for the commission of a dangerous felony prior to or at the time of committing a

dangerous felony on or after January 1, 2008, or the commission of an aggravated robbery or especially aggravated robbery prior to or at the time of committing an aggravated robbery on or after January 1, 2008.

Includes statutory rape by an authority figure in the “violent sexual offenses” for the purposes of the sex offender registry. Extends the statute of limitations for the prosecution of aggravated child rape and statutory rape by an authority figure.

Defines statutory rape as the unlawful sexual penetration of a victim by a defendant when the victim is at least 13 but less than 15 years of age and the defendant is at least four but less than 10 years older than the victim or when the victim is at least 15 but less than 18 years of age and the defendant is at least five but less than 10 years older than the victim.

#### FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures - \$60,323,700 / Incarceration\*

#### **FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:**

**Increase State Expenditures - \$23,520,400 / Incarceration\***

Assumptions applied to amendment:

- According to the Department of Correction (DOC), the average operating cost per inmate per day for calendar year 2007 is \$60.16.
- According to the U. S. Census Bureau, population growth in Tennessee has been 1.09 percent per year for the past ten years.
- According to DOC, in October, 2005, 2.86 percent of the inmate population (547) had possession of a weapon by a convicted felon as a secondary offense. Annual admissions for FY06 for dangerous crimes were 5,012. DOC estimates two and one-half percent (125) of those annual admissions would have possession or employment of a firearm during the commission, attempt to commit, flight or escape from the commission, or flight or escape from the attempt to commit a dangerous felony. DOC assumes 75 percent (94) of those would be convicted of a Class D felony in the first year and would be required to serve a mandatory minimum 2.55 years as a result of this bill. Population growth would result in 11 additional offenders in the tenth year. The maximum cost in the tenth year is based on 105 offenders serving 2.55 years (931.39 days) as a result of this bill.
- 105 offenders would be convicted of a Class D felony and would serve 2.55 years. The cost per inmate at 2.55 years is \$56,032.42 (\$60.16 x 931.39 days). The total additional operating cost for 105 offenders is

\$5,883,404.10 (\$56,032.42 x 105). The remaining 25 percent (31) would be convicted of a Class D felony, with a prior felony conviction, in the first year and would serve a mandatory minimum 4.25 years as a result of this bill. Population growth would result in four additional offenders in the tenth year. The maximum cost in the tenth year is based on 35 offenders serving 4.25 years (1552.31 days) as a result of this bill. 35 offenders will be convicted of a Class D felony and will serve a mandatory minimum 4.25 years. The cost per inmate at 4.25 years is \$93,386.97 (\$60.16 x 1552.31 days). The total additional operating cost for 35 offenders is \$3,268,543.95 (\$93,386.97 x 35).

- 71 inmates had attempted second degree murder as a primary offense. DOC assumes 25% (18) of these involved the use of a firearm. Population growth will result in two additional offenders in the tenth year. The maximum cost in the tenth year is based on 20 offenders. 75% (15) of those would serve an additional 5.1 years for the employment of a weapon. The maximum cost in the tenth year is based on 15 offenders serving 5.1 years (1862.78 days). The cost per inmate at 5.1 years is \$112,064.84 (\$60.16 x 1862.78 days). The total additional operating cost for 15 offenders is \$1,680,972.60 (\$112,064.84 x 15). The remaining 25% (5) would serve an additional 8.5 years for employment of a weapon with a prior felony conviction. The cost per inmate at 8.5 years is \$186,774.54 (\$60.16 x 3104.63 days). The total additional operating cost for five offenders is \$933,872.70 (\$186,774.54 x 5).
- 71 inmates had voluntary manslaughter as a primary offense. DOC assumes 25% (18) of these involved the use of a firearm. Population growth will result in two additional offenders in the tenth year. The maximum cost in the tenth year is based on 20 offenders. 75 percent (15) of those would serve an additional 5.1 years for the employment of a weapon. The maximum cost in the tenth year is based on 15 offenders serving 5.1 years (1862.78 days). The cost per inmate at 5.1 years is \$112,064.84 (\$60.16 x 1862.78 days). The total additional operating cost for 15 offenders is \$1,680,972.60 (\$112,064.84 x 15). The remaining 25 percent (5) would serve an additional 8.5 years for employment of a weapon with a prior felony conviction. The cost per inmate at 8.5 years is \$186,774.54 (\$60.16 x 3104.63 days). The total additional operating cost for five offenders is \$933,872.70 (\$186,774.54 x 5).
- 62 inmates had evading arrest/risk of death as a primary offense. DOC assumes 25% (16) of these involved the use of a firearm. Population growth will result in two additional offenders in the tenth year. The maximum cost in the tenth year is based on 18 offenders. DOC estimates that 75% (14) would be charged with a Class C felony in the first year and would be required to serve a mandatory minimum 5.1 years as a result of this bill. The cost per inmate at 5.1 years is

\$112,064.84 (\$60.16 x 1862.78 days). The total additional operating cost for 14 offenders is \$1,568,907.76 (\$112,064.84 x 14). The remaining 25% (4) would have a prior felony conviction at the time of the offense and would serve a mandatory minimum 8.5 year sentence. The cost per inmate at 8.5 years is \$186,774.54 (\$60.16 x 3104.63 days). The total additional operating cost for four offenders is \$747,098.16 (\$186,774.54 x 4).

- 34 inmates had carjacking as a primary offense. DOC estimates 25% (9) involved a firearm. Population growth will result in one additional offender in the tenth year. The maximum cost in the tenth year is based on 10 offenders. Estimate assumes 75% (7) would serve a minimum mandatory 5.1 years as a result of this bill. The cost per inmate at 5.1 years is \$112,064.84 (\$60.16 x 1862.78 days). The total additional operating cost for seven offenders is \$784,453.88 (\$112,064.84 x 7). The remaining 25% (3) would have a prior felony conviction at the time of the offense and would serve a minimum mandatory 8.5 year sentence as a result of this bill. The cost per inmate at 8.5 years is \$186,774.54 (\$60.16 x 3104.63 days). The total additional operating cost for three offenders is \$560,323.62 (\$186,774.54 x 3).
- Estimate assumes that possession with intent to go armed is a lesser included offense of the offense to employ a firearm. Estimate also assumes, based on recidivism data provided by DOC, that 25% of offenders convicted under this bill have a prior conviction as defined by the proposed amendment.
- According to DOC, there has been an average of 630 admissions per year for the past five years for aggravated robbery. Estimate assumes that eight percent (50) of those inmates would have a prior conviction as defined by the proposed amendment.
- Fifty persons would be convicted of the Class B felony offense of aggravated robbery as a second or subsequent conviction and would have to serve 100 percent of the sentence imposed by the court less earned sentence credits as a result of this bill. These offenders would serve an additional 4.4 years (an increase from 2.4 years to 6.8 years).
- Population growth of 1.09 percent per year will result in six additional offenders serving additional time in the tenth year as a result of this bill. The maximum cost in the tenth year is based on 56 offenders.
- The cost per inmate at 2.4 years (876.60 days) is \$52,736.26 (\$60.16 x 876.60 days). The cost per inmate at 6.8 years (2,483.70 days) is \$149,419.39 (\$60.16 x 2,483.70 days). The additional cost from increasing the average sentence length from 2.4 years to 6.8 years is \$96,683.13 (\$149,419.39 - \$52,736.26). The total additional operating cost for 56 offenders is \$5,414,255.28 (\$96,683.13 x 56).
- Current definition of statutory rape involves a victim who is at least 15 but less than 18 years of age and the defendant is more than five years

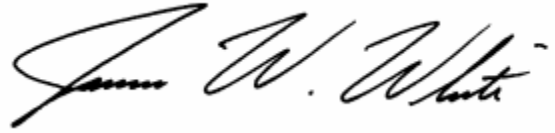
older than the victim. The offense becomes aggravated statutory rape if the defendant is at least 10 years older than the victim.

- Under existing statute, statutory rape by an authority figure is a Class C felony and persons convicted of this offense are not eligible for probation or judicial diversion.
- The offense of statutory rape by an authority figure was enacted in 2006. Since there are not sufficient data on this offense, the Department of Correction (DOC) is utilizing data regarding sexual battery and sexual battery by an authority figure.
- In FY05, there were 54 admissions to DOC for sexual battery offenses and 14 for sexual battery by an authority figure offenses. This estimate assumes the same percentage (20.6) would be true for statutory rape. In FY06, there were 122 persons admitted for statutory rape.
- DOC assumes that increasing the statute of limitations will increase convictions by five percent ( $122 \text{ admissions} \times 20.6\% \times 5\% = 1.26$ ). Estimate also assumes there will be one additional conviction every five years for aggravated child rape.
- One person will be convicted of the Class C felony of statutory rape by an authority figure and will serve 0.9 years (328.73 days). According to DOC, the average operating cost per inmate per day for calendar year 2007 is \$60.16. The cost per inmate at 0.9 years is \$19,776.40 ( $\$60.16 \times 328.73 \text{ days}$ ).
- One additional person every five years will be convicted of aggravated child rape with 50 years time served. The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one additional offender every five years. The cost per inmate in the tenth year is \$219,734.40 ( $\$60.16 \times 3652.50 \text{ days}$ ). The annualized time served per conviction is 730.50 days (0.20 annual number of convictions  $\times 3652.50 \text{ days}$ ). The annualized cost per conviction is \$43,948.88 ( $0.20 \times 3652.20 \text{ days} \times \$60.16$ ).
- The Board of Probation and Parole estimates a minimal additional number of offenders will be required to register as a result of this bill. The cost of processing additional registrants will be not significant.
- Adding the language, less than 10 years older, to the definition of the defendant eliminates any overlap between statutory rape and aggravated statutory rape.

*\*Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

**CERTIFICATION:**

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, reading "James W. White". The signature is written in a cursive style with a large, stylized initial "J".

James W. White, Executive Director

/LSC